United Nations CCPR/C/121/D/2203/2012

International Covenant on Civil and Political Rights

Distr.: General
1 February 2018
English
Original: Spanish

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2203/2012*, **, ***

Communication submitted by:	Gabriel Osio Zamora
Alleged victim:	The author
State party:	Bolivarian Republic of Venezuela
Date of communication:	25 May 2012
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 2 November 2012 (not issued in document form)
Date of adoption of Views:	7 November 2017
Subject matter:	Liquidation of a brokerage firm without due process
Procedural issues:	Exhaustion of domestic remedies
Substantive issues:	Right to a fair and public hearing by a competent, independent and impartial tribunal; right to an effective remedy; equality before the law and non-discrimination
Articles of the Covenant:	2 (1) and (3), 14 (1) and (3) and 26
Articles of the Optional Protocol:	2, 3 and 5 (2)(b)

1. The author of the communication is Gabriel Osio Zamora, a national of the Bolivarian Republic of Venezuela born in 1967. He claims that the State party has violated his rights under articles 2 (1) and (3); 14 (1) and (3) and 26 of the Covenant. The author is not represented by legal counsel. The Optional Protocol entered into force for the State party on 10 August 1978.

* Adopted by the Committee at its 121st session (16 October–3 November 2017).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelić, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany and Margo Waterval.

*** An individual opinion by Committee member Olivier de Frouville is annexed to the present Views.

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The facts as submitted by the author

2.1 The author is a director of, and shareholder in, Econoinvest Casa de Bolsa, C.A., a Venezuelan securities brokerage firm founded in 1996.[1] In 2009, a series of actions were undertaken against brokerage firms and companies in the banking, financial and securities sector, which, together with searches, liquidations, deprivation of liberty and legislative reforms, developed into a policy of persecution and harassment against persons in that sector.

2.2 Against this backdrop, on 17 May 2010, an amendment was made to the 2007 Act on Illegal Foreign Exchange Transactions, which regulated a number of the activities of brokerage firms. In the 2007 version, article 9 of the Act prescribed punishments for anyone who conducted foreign exchange transactions without the involvement of the Central Bank of Venezuela (foreign exchange crime). However, securities trading was not deemed illegal. The 2010 amendment expanded the scope of foreign exchange crime to cover securities trading and thereby introduced a new criminal offence punishable by a fine and up to 6 years' imprisonment.[2] This new provision was applied retroactively, and several directors of, and shareholders in, brokerage firms were charged, prosecuted and deprived of their liberty. The author notes that this occurred despite the fact that the Constitution (art. 4) prohibits the retroactive application of criminal provisions. At the time of the 2010 amendment, the then President of the Republic Hugo Chávez spoke out against brokerage firms such as Econoinvest, stating that they were "corrupt" and should be eliminated.

2.3 On 24 May 2010, police officers and public prosecutors searched the headquarters of Econoinvest and arrested four of the company's directors.[3] The following day, by resolution No. 070-2010, the then National Securities Commission (now the National Superintendency of Securities)[4] decided to place Econoinvest under administration, without ceasing trading, and to appoint an official administrator. In the author's view, this measure was taken without there being any of the grounds for administration established in the Capital Market Act.[5] Econoinvest had complied with all applicable regulations and had maintained a positive account balance at all times, with assets far exceeding liabilities; there was therefore no risk to the assets of its clients or creditors.

2.4 On 14 June 2010, Econoinvest applied to the National Superintendency of Securities for reconsideration of the resolution ordering it to be placed under administration,[6] but never received a reply. The author notes that, under domestic law, failure to respond to an administrative remedy is tantamount to rejecting it.

2.5 On 19 August 2010, the then President of the Republic commented publicly on the measures taken against Econoinvest, calling the company the epitome of corruption and

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[1] In 2008, Econoinvest had over 1,000 staff, some 300,000 customers and assets of 356 million bolívares (around US$ 83 million).

[2] New article 9 establishes that the Central Bank of Venezuela shall have exclusive competence to buy and sell foreign currency, in cash or in bonds, and that anyone who, bypassing the Central Bank of Venezuela, buys, sells or in any way offers, disposes of, transfers or receives foreign currency shall be fined twice the amount of the transaction. When the transaction amounts to more than US$ 20,000, the penalty shall be imprisonment from 2 to 6 years and a fine.

[3] At the time of the submission of the communication, the four directors were in pretrial detention. On 30 August and 23 November 2011, the Working Group on Arbitrary Detention decided, in its opinions Nos. 28/2011 and 65/2011, respectively, that their detention was arbitrary.

[4] The National Superintendency of Securities is the body tasked with regulating and monitoring the effective functioning of the securities market, under the supervision and coordination of the Supreme Organ of the National Financial System. It is attached to the Ministry of People's Power for Economy and Finance only for the purposes of administrative supervision.

[5] Article 82 of the Capital Market Act establishes that the purpose of the administration procedure is to decide on the measures needed to permit the recovery, restructuring or even liquidation of the brokerage company, where the company is facing a difficult financial situation that might be prejudicial to its shareholders, creditors or clients. Administration is also justified when the trading company is in breach of the applicable legislation.

[6] The purpose of an application for reconsideration, as provided for in article 94 of the Organic Act on Administrative Procedures, is to challenge an administrative decision by requesting the issuing authority to review its position on the case.

announcing that an extradition request had been filed against two of its directors, who had fled the country and who he branded "thieves".

2.6 On 5 September 2010, by announcement in the national press, Econoinvest's shareholders were called to an extraordinary general meeting for the presentation of the final report on the administration procedure and to decide on the future of the company's operations.

2.7 On 10 September 2010, that meeting took place. The government-appointed administrator was the only participant with the right to vote. The author's representative and the other shareholders were allowed to attend, but not to vote. The administrator read out her report, which included a recommendation to liquidate Econoinvest. None of those present were allowed to comment on the report, request a copy of it or express any view in defence of the shareholders' rights and interests. The administrator added that she reserved the right to request the National Superintendency of Securities to open disciplinary proceedings against Econoinvest directors and shareholders.

2.8 On 30 September 2010, the author filed an application for asylum in the United States, alleging that he was a victim of political persecution. The application was granted in 2014.

2.9 On 6 October 2010, without prior proceedings or a hearing for the shareholders, the Superintendency published, in the Official Gazette, resolution No. 001, which provided for the liquidation of Econoinvest on the basis of article 21 (3) of the Capital Market Act, which establishes that a company may be liquidated "whenever it is deemed appropriate during the administration procedure". The author contends that this provision is arbitrary as it gives absolute discretion to liquidate. According to resolution No. 001, the administration procedure had uncovered serious violations of the Capital Market Act, the Commercial Code, the Act on Organized Crime and the Act on Illegal Foreign Exchange Transactions. According to the author, however, no other administrative or judicial body established those alleged violations.

2.10 On 25 October 2010, the author and other Econoinvest shareholders requested the Superintendency to provide certified copies of the report on the administration procedure and the minutes of the extraordinary general meeting. The request was reiterated on 27 October and 4 November 2010, but remained unanswered.[7]

2.11 On 4 November 2010, the author, in his capacity as an Econoinvest shareholder, submitted an appeal for annulment, a request for interim protection (*amparo cautelar*) and, secondarily, a petition for protective measures with suspensive effect in relation to the decision to liquidate Econoinvest, alleging violations of the rights to a defence, due process and the presumption of innocence, and the right to be heard by a duly appointed judge. The author claimed that, in the process of placing the company under administration and liquidating it, shareholders were not permitted to prepare a proper defence; that they were not granted a hearing; that they were not given access to the case file or the opportunity to collect evidence; and that the proceedings concluded with a finding of offences covered by laws that fell outside the competence of the Superintendency and without notifying those concerned that they were under investigation for such offences.

2.12 On 14 November 2010, the then President of the Republic made further disparaging public statements about Econoinvest, saying that, within a month, "a new brokerage firm will be ready … a firm that belongs to us, to the people, and not to capitalism".

2.13 On 23 November 2010, at the State party's request, the International Criminal Police Organization (INTERPOL) launched a search for the author, claiming that he was a "fugitive".

2.14 On 6 December 2010, Trial Court of First Instance No. 13 of the Caracas Metropolitan Area District Court ordered the author's arrest for illegal currency trading and criminal association. The author asserts that this decision was based on an interim measure allegedly issued by Court No. 16 on 30 July 2010. However, no such measure is mentioned

[7] The author provides copies of the three requests, which bear the Superintendency's reception stamp.

in any of the case files prepared by the Court, rendering the author's arrest manifestly illegal and arbitrary. Unlike those for other Econoinvest shareholders and directors, the author's arrest warrant could not be executed, as he was abroad.

2.15 In its judgment of 18 April 2011, the Second Administrative Court dismissed the requests for interim protection and for protective measures with suspensive effect in relation to the decision to liquidate Econoinvest, which the author had submitted on 4 November 2010. The Court held: (a) that the Superintendency had acted in accordance with its mandate to monitor trading activity and that said actions were not regulated as they were extremely broad and not tied to any specific procedure; (b) that the author had not proved that he had not been granted access to the report on the administration procedure; (c) that there was no requirement for a hearing to be held as part of the procedure for taking a company into administration and liquidating it; (d) that the administration procedure was not punitive in nature and that the liquidation of Econoinvest was not a punishment; and (e) that the right to be heard by a duly appointed judge had not been violated, as the decision was not a purely criminal matter and, if there was evidence that an offence had been committed, the Superintendency could call for action by the competent authorities.

2.16 On 2 May 2011, the author requested the recusal[8] of the judges of the Second Administrative Court from hearing his appeal for annulment, as they were the same judges who had rejected his request for interim protection in relation to the liquidation decision.

2.17 In August 2011, INTERPOL withdrew the Red Notice that it had issued for the author, pursuant to article 3 of its Constitution and General Regulations, under which international cooperation in the search for a person is excluded if the person is accused of committing political, military, religious or racial offences.

2.18 On 19 October 2011, the Supreme Court dismissed the appeal that the author, in his capacity as an Econoinvest shareholder, had filed against the decision to deny his request for interim protection. The Court considered that, inter alia, the right to a defence and due process had been respected, "at least initially", through the holding of the general meeting and the presentation of the report on the administration procedure, and that the author had failed to demonstrate that the authorities had denied him access to the case file.

2.19 On 21 November 2011, the alternate judge of the Second Court ruled that the challenge submitted by the author on 2 May 2011 against the judges of that Court was inadmissible. The judge considered that the judges in question had not expressed any opinion on the merits of the appeal for annulment but had drawn "simple comparisons with the subject of controversy". On 15 December 2011, the author appealed that decision to the same Court, claiming that the decision to dismiss the challenge must be a collegial decision, not one made by a single individual, that proper legal procedure had not been followed and that it had not been possible to submit evidence, as required by article 42 et seq. of the Organic Act on the Settlement of Administrative Disputes. On 16 January 2012, the Court rejected this appeal by a judgment that was not reasoned and was pronounced by the President of the Court, who himself had been challenged.

2.20 On 24 January 2012, the author submitted an application for judicial review to the Political and Administrative Division of the Supreme Court, requesting that it restore protection of his rights; the application was declared inadmissible on 29 February 2012.

2.21 The author claims that he has exhausted all available domestic remedies that could have preventively blocked the liquidation of Econoinvest and that the appeal for annulment submitted on 4 November 2010 has been unreasonably delayed — no date for the hearing has even been set yet.

[8] Article 42 (5) of the Organic Act on the Settlement of Administrative Disputes provides that justice officials may be challenged if they had expressed an opinion on the substance of the case before the corresponding judgment had been handed down, provided that it was the judge in that case who was being challenged.

2.22 The author asserts that, as a shareholder in, and director of, Econoinvest, he has been personally harmed by the administrative and judicial proceedings against the company.[9] Although the processes of placing Econoinvest under administration and liquidating it were ongoing, the manner in which they were being carried out and their effects directly impinged on his individual rights under the Covenant. As a result, the author — as an individual and representing himself — had turned, like other shareholders, to the domestic courts to denounce the lack of procedural guarantees in those processes.

The complaint

3.1 The author claims that the administration and liquidation proceedings violated his right to a fair and public hearing. Both article 14 (1) of the Covenant[10] and the Constitution (art. 49) guarantee due process in all criminal and civil proceedings, and this guarantee is also applicable to the administration and liquidation proceedings concerning Econoinvest. The National Superintendency of Securities ordered Econoinvest to be placed under administration without following any legal procedure whatsoever, limiting itself to publishing the decision in the Official Gazette. The shareholders were never called to a hearing, nor were they permitted to present claims and evidence. In order to determine legal responsibilities and impose penalties, the Superintendency should have followed a procedure allowing the individuals concerned to exercise their right to a defence. Although the Capital Market Act does not provide for an administration procedure, the Superintendency should have followed the procedure under article 394 of the Act on Banks and Other Financial Institutions, which requires that the parties should be heard. In the present case, the administrator ordered the liquidation of Econoinvest without allowing the shareholders to express their views and without awaiting the outcome of the application for reconsideration of the administration order.

3.2 In addition, the author did not have adequate facilities for the preparation of his defence, as required under article 14 (3) (b) of the Covenant. The right to a "fair trial" implies respect for the principles of equality of arms and adversarial proceedings. The lack of adequate facilities to prepare his defence and the lack of access to the case file, despite repeated requests, violate these principles.

3.3 Moreover, the decisions concerning the placement of the company under administration and its liquidation were not sufficiently reasoned, despite the fact that the Organic Act on Administrative Procedures (arts. 9 and 12) requires administrative decisions to be well founded, this being a prerequisite for the proper review of the proportionality, reasonableness and legality of administrative decisions.[11] The author was therefore prevented from knowing the reasons for the administration procedure and from exercising his right to a defence, in violation of article 14 (1) and (3) (a) of the Covenant.

3.4 The author also alleges that the courts that heard his appeals against the administrative decisions lacked independence and impartiality, in violation of article 14 (1) of the Covenant. The Second Administrative Court was composed of provisional judges, who were not appointed through a public competition (Constitution, art. 255), and therefore lacked security of tenure and could be dismissed peremptorily, without reason or the need for any procedure and with no right of appeal.[12] Moreover, the judges who were to hear the

[9] The author refers to the Inter-American Commission on Human Rights' reports Nos. 67/01, Tomás Enrique Carvallo Quintana (Argentina), 14 June 2001, para. 54, and 72/11, William Gómez Vargas (Costa Rica), 31 March 2011, para. 33; and to the judgment of the Inter-American Court of Human Rights in *Cantos v. Argentina*, Preliminary Objections, 7 September 2001, paras. 27 and 29.

[10] The author cites the Committee's general comment No. 32 on the right to equality before courts and tribunals and to a fair trial; the Committee's Views in communication No. 207/1986, *Morael v. France*, of 28 July 1989; and the judgments of the Inter-American Court of Human Rights in *Aguirre Roca, Rey Terry and Revoredo Marsano v. Peru*, of 31 January 2001, and *Ivcher Bronstein v. Peru*, of 6 February 2001.

[11] Communication No. 355/1989, *Reid v. Jamaica*, of 8 July 1994.

[12] The author cites judgment No. 1413 of the Supreme Court of 10 July 2007, in which the Constitutional Chamber found that civil servants in temporary judicial or administrative posts did not have "the status of permanent staff and, as a result, do not enjoy the associated rights, such as security

appeal for annulment of the decision of the National Superintendency of Securities were the same as those who had previously rejected the request for interim protection, which meant that their impartiality was compromised, given that they had prejudged the merits of his appeal. The author maintains that at no point in the recusal proceedings was he given the opportunity to put forward his arguments or to collect evidence.

3.5 The administrative and judicial proceedings were unduly delayed. Although article 14 (3) (c) of the Covenant relates to criminal proceedings, the Committee has established that the requirement stipulated therein applies also to litigation of a civil nature, which means that judicial proceedings should generally be expeditious.[13] However, the application for reconsideration of the decision to place the company under administration and the appeal for annulment of the decision to liquidate the company are still pending. Yet, under the Organic Act on the Settlement of Administrative Disputes, the appeal for annulment should have been adjudicated within 90 days.

3.6 In this context, the author argues that he did not have access to an effective remedy, in violation of article 14 (1), read in conjunction with article 2 (3), of the Covenant. In the light of the rejection of the request for interim measures to suspend the decision to liquidate Econoinvest, the annulment proceedings had in practice become moot, since, when the appeal for protection and the petition for protective measures with suspensive effect regarding the administrative decision were ruled inadmissible, the liquidation proceedings continued. Accordingly, even if the decision in the annulment proceedings were in favour of the author, it would not be enforceable since the company has already been liquidated.

3.7 The liquidation decision issued by the National Superintendency of Securities amounted, in reality, to the confiscation of the assets of Econoinvest shareholders and to unequal treatment by applying "ad hoc regulations that sought to deprive them of their rights". Although the right to property is not safeguarded by the Covenant, the author contends that the manner in which events unfolded and the violations of due process, of the right to equal access to justice and of the right to an effective remedy, as established in articles 14 (1) and 2 (1) and (3) (a), also violated the principles of non-discrimination and equality before the law set out in article 26 of the Covenant.[14]

3.8 The author requests the Committee to urge the State party to restore full due process in the appeals proceedings that have been instituted; to provide him with an effective remedy before an independent and impartial tribunal so that he can defend his rights and guarantees, including his assets as a shareholder in Econoinvest; and to provide him with comprehensive reparation, including compensation, for the damage caused, in keeping with the principle of *restitutio in integrum*.

State party's observations on admissibility and merits

4.1 In its observations of 2 January and 12 February 2013, the State party maintains that the communication is inadmissible because of a failure to exhaust domestic remedies. The appeal for annulment filed by the author on 4 November 2010 is still pending. Moreover, the author has not exhausted other available remedies, namely the special request for a review of legality and the request for a constitutional review. The request for a review of legality, provided for under article 95 of the Organic Act on the Settlement of Administrative Disputes, is a request to review final judgments that are believed to be in violation of the law. Through this remedy, the Political and Administrative Chamber of the Supreme Court may re-examine the merits of the case. The request for a constitutional review, provided for under article 5 of the Act on the Supreme Court, allows the Constitutional Chamber of the Supreme Court to check whether, in an *amparo* decision, the Constitution has been incorrectly applied or interpreted. The remedy is "extraordinary, exceptional, limited and discretionary", and the Constitutional Chamber has the

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of tenure, which means that they can readily be suspended or removed from their posts in accordance with the powers exercised by the relevant judicial or administrative authority".

[13] Communication No. 207/1986, *Morael v. France*, of 28 July 1989, para. 9.3.

[14] Communications against the Czech Republic Nos. 516/1992, *Simunek et al.*, of 19 July 1995; 586/1994, *Adam*, of 23 July 1996; 945/2000, *Marik*, of 26 July 2005; and 1463/2006, *Gratzinger*, of 25 October 2007.

discretionary power to determine whether or not to review an *amparo* decision. Lastly, the author has not used the remedy that would enable him to put forward his claims regarding the lack of independence and impartiality of judges, namely a request for the recusal of the judges in charge of the criminal proceedings against him.

4.2 The State party submits that, in accordance with the law, the State may restrict the right of ownership and even expropriate the property in question to protect the public interest. Furthermore, under article 113 of the Constitution, agreements relating to prohibited practices, such as monopolies, abuse of dominant position and usury, are considered null and void. The State may adopt measures to stop or prevent such practices, irrespective of whether they constitute criminal offences. Such restrictions on assets and economic freedom are inherent to the existence of a social State governed by the rule of law and are aimed at protecting the public interest and ensuring macroeconomic stability.

4.3 The measures against Econoinvest were taken following the arrest of its directors with a view to safeguarding the interests of the company's clients and ensuring the stability of the securities market. The then National Securities Commission, acting within its sphere of competence, placed Econoinvest under administration without halting its operations, which meant that the company could continue operating. During the general meeting of shareholders, which was convened and held in public, the report on the administration procedure was presented and it was recommended that the company should be liquidated for failing to comply with foreign exchange regulations. On that basis, the Superintendency ordered the liquidation of Econoinvest, in application of the 2011 regulations relating to administrative liquidation of authorized securities dealers, brokerage firms dealing in agricultural commodities, collective investment undertakings and their management companies.

4.4 The liquidation of Econoinvest has not yet been completed for reasons beyond the Superintendency's control, including the existence of criminal measures prohibiting the transfer or encumbrance of the company's assets, the existence of financial holdings in foreign companies and the existence of creditors who have not yet recovered the debts owed to them. However, the administrative liquidation proceedings have had no impact on the criminal proceedings instituted against the directors of Econoinvest.

4.5 The criminal investigation against several brokerage firms, including Econoinvest, was launched following a complaint filed on 12 May 2010 by the National Superintendency of Securities for "alleged irregularities committed by various brokerage firms that were carrying out currency transactions without having physical securities to support the transactions", also known as V-Brokers. On the basis of that complaint, the Public Prosecution Service applied for a search warrant in order to review the operations carried out by Econoinvest. In the course of this search, which was conducted on 24 May 2010, incriminating evidence was found, and the directors present were arrested for the purpose of being brought before a judge. On the basis of the evidence collected, the Public Prosecution Service filed charges of "illegal currency trading and criminal association" against members of the Board of Directors of Econoinvest on 12 July 2010 before Trial Court of First Instance No. 16 of the Caracas Metropolitan Area District Court. The complaint was admitted in part, the offence of "criminal association" having been changed to "conspiracy".

4.6 On 12 July 2012, the Public Prosecution Service brought charges against the four directors of Econoinvest for illegal currency trading (under article 9 of the Act on Illegal Foreign Exchange Transactions) and conspiracy (under article 286 of the Criminal Code). The prosecutors in charge of the investigation will introduce 100 pieces of documentary evidence and witness statements that will establish that the offences with which the directors are charged were committed. This case is unprecedented as there is no relevant case law and it represents a "landmark in criminal economic law".

4.7 Charges relating to the offence of "illegal currency trading" were brought pursuant to the 2007 Act on Illegal Foreign Exchange Transactions, whose amendment of 27

February 2008 was in force when the events took place.[15] The partial amendment of 17 May 2010 was not applied retroactively.

4.8 Regarding the independence and impartiality of the judiciary, the State party describes the "process of refounding" the State on the basis of the 1999 Constitution. Against this background, the process of reorganizing the judiciary with a view to reducing the percentage of provisional judges has progressed.[16] The temporary nature of judicial appointments does not exclude the impartiality of the judges concerned. Although such judges do not enjoy the job stability of career public servants, that does not mean that their decisions are invalid. The fact of being tried by a provisional judge does not undermine legal certainty, since the rights of citizens are guaranteed by the justice system, which oversees the judicial process. In the present case, there is no reason to suppose that the judges and prosecutors in charge of the case were placed under pressure or acted in a partial manner.

4.9 As noted by the Political and Administrative Chamber of the Supreme Court, the placement of a brokerage firm into administration is a sui generis act intended to remedy the financial situation of a company. As a unilateral act of the inspection body, the decision to place an undertaking under administration requires no preliminary procedure, such as that provided for by the Act on Banks and Other Financial Institutions, since the Capital Market Act does not regulate administration proceedings.

4.10 Regarding access to the report on the administration procedure and to the minutes of the extraordinary general meeting, the Second Court stated that evidence had not been adduced to show that the National Superintendency of Securities had denied access to those documents. Furthermore, the failure by the National Superintendency to provide copies of those documents does not in itself constitute a violation of the right to due process, because that right is infringed only if the authorities categorically refuse such access. The Court also found that the administration proceedings were not a disciplinary measure. Within the context of the administration proceedings, no charges were brought concerning the commission of an offence punishable under the Act on Organized Crime or the Act on Illegal Foreign Exchange Transactions. The National Superintendency may impose only those administrative sanctions expressly provided for by the Capital Market Act. Within the framework of its powers, the National Superintendency verified the legality of Econoinvest's practices and submitted the file to the competent body.

4.11 The State party notes that the Second Court found that the analysis of Econoinvest's financial situation had revealed the need for supporting evidence, which had not been provided. The Court further indicated that the report on the administration procedure showed that the decision to liquidate the company was not based exclusively on its poor financial situation but also on "reports of suspicious activities and a set of circumstances that, according to the authorities, could cause serious harm to shareholders, creditors, clients and the securities market".

4.12 Regarding the author's allegations under article 26 of the Covenant, the State party refers to the judgment of the Supreme Court of 18 October 2011, in which it upheld the decision of the Second Court.

4.13 The State party states that the National Superintendency of Securities is authorized to act in the event of a breach of the rules governing the conduct of individuals and undertakings within its jurisdiction. Within the framework of its duties, the National Superintendency may "supplant the will of the shareholders of a company" and order its liquidation without first calling a meeting of shareholders.

[15] On 27 February 2008, a corrigendum to the Act on Illegal Foreign Exchange Transactions was published in Official Gazette No. 38,879. In article 9 of the Act, the phrase "shall be punished with a fine twice the amount of the transaction or its equivalent in bolívares" was replaced with "shall be punished with a fine equivalent in bolívares to twice the amount of the transaction".

[16] The State party cites the judgment of the Inter-American Court of Human Rights in *Reverón Trujillo v. Venezuela*, of 30 June 2009, in which it is indicated that the proportion of provisional judges fell from 80 per cent in 2005 to 44 per cent by the end of 2008.

4.14 Regarding the right to a defence, the Second Court considered that to grant the author a hearing to defend himself against the charges would entail a "disruption of the administration procedure". The administration procedure will begin and continue without interruption until its conclusion, with the National Superintendency taking the measures available to it, as appropriate; it is a special procedure that is not governed by the rules applicable to administrative procedures. If the party concerned considers that the report on the administration procedure undermines his rights, he may contest it through an application for reconsideration.

4.15 The right to an effective remedy is guaranteed by the ability to bring an action before the courts to request the annulment of an administrative act. Nevertheless, the authorities may carry out an act, even when it has not been reviewed by a court and provided that provisional measures have not been ordered to prevent its implementation, with a view to ensuring the enforceability of administrative acts.

4.16 Lastly, the criminal proceedings against the author have been suspended, since the latter is a fugitive from justice and, under Venezuelan law, a person may not be tried in absentia.

Author's comments on the State party's observations

5.1 In his comments of 5 March 2013, the author claims that the appeal for annulment, which has been pending at the initial stage since 4 November 2010, has been unduly and unreasonably prolonged for reasons that are not attributable to him or to the complexity of the case. The processing of the application for protective measures and the recusal motion have no suspensive effect on the main proceedings. Furthermore, these remedies have become moot, since the consequences that the author sought to prevent have occurred. The remedy that could have protected him from the violations of the Covenant caused by the placement of Econoinvest under administration was that of interim protection, which was denied arbitrarily at first instance and on appeal. The author states that the main proceedings were not suspended by the request for interim measures, the motion for the recusal of the judges of the Second Court or the application for judicial review, which, consequently, cannot justify the undue delay in those proceedings. Two years after those applications were filed, no date had been set for an initial hearing.

5.2 The author asserts that, apart from being neither available nor effective, the remedies mentioned by the State party, namely the extraordinary request for a constitutional review and the special request for a review of legality, are extraordinary and discretionary. The State party refers to those remedies in abstract terms, without explaining how they would be effective in the present case and without demonstrating that there was a reasonable prospect that they would be effective.

5.3 The author does not question the concept of the social State governed by the rule of law as presented by the State party or the existence and powers of the National Superintendency of Securities which, as a public body, should act in compliance with the law and human rights obligations.

5.4 The author maintains that Econoinvest's activities were neither illegal nor contrary to the public interest and that, in any case, the State party has not produced any evidence to show that they were.

5.5 The State party justified the liquidation of Econoinvest by the arrest of the company's directors. However, their detention was declared arbitrary by the Working Group on Arbitrary Detention. Moreover, that arrest did not justify the placement under administration or the liquidation of Econoinvest, given that less onerous measures were available to remedy that situation. For example, in accordance with its statutes, Econoinvest could have between 3 and 11 directors, along with their respective substitutes. The management of Econoinvest could have been entrusted to other directors who were not being held in detention, or a general meeting could have been called to elect new directors.

5.6 The author submits that, although the Capital Market Act contains a loophole in that it does not regulate the liquidation procedure, the State party should have fixed that loophole through a procedure that guaranteed due process. In that regard, the holding of an

extraordinary general meeting did not compensate for the lack of an adequate procedure to guarantee the right of shareholders to a defence.

5.7 The State party has stated that the decision to liquidate Econoinvest was justified by an alleged breach of the law. However, no such breach has been found by a court after due judicial process. Moreover, the alleged lawfulness of the liquidation decision does not make it legitimate or less prejudicial to the rights enshrined in the Covenant.

5.8 The author points out that Econoinvest's assets should have been placed in trust at the disposal of the shareholders, as required by law. However, to date, that has not been done, and the company has not yet been liquidated.

5.9 The author notes that the present communication does not concern the criminal proceedings against him and three other directors of Econoinvest but rather the placement under administration and liquidation of Econoinvest.

5.10 The author reiterates that the 2010 amendment to the Act on Illegal Foreign Exchange Transactions was applied retroactively. Although article 9 of the 2007 Act made the purchase and sale of foreign currency a criminal offence, securities trading was exempted. This exemption was removed by the 2010 amendment, and the directors of Econoinvest were prosecuted for trading in securities, with the result that a criminal law was clearly applied retroactively.

5.11 With regard to the independence of the judiciary, the author notes that approximately 50 per cent of Venezuelan judges continue to be appointed and removed at will and that, even though there is a system of judicial discipline that monitors the honesty and integrity of judges, it serves only to persecute judges who make decisions that are contrary to the interests of the executive branch.[17] In the present case, all the judges of the Second Court, in addition to being non-tenured, heard the interim protection application and disqualification request, and were therefore not independent. Moreover, all the prosecutors in charge of the criminal investigation in the administration and liquidation proceedings and the prosecutors in charge of the criminal proceedings against the company directors were appointed on a provisional basis, which means that they were not independent, either.

5.12 The author notes that, although the placement under administration of a brokerage firm is a sui generis act, which provides the State with greater freedom of action and flexibility, this cannot justify a failure to respect the minimum due process guarantees established in the Constitution and the Covenant, which are applicable to any procedure aimed at determining rights, regardless of the body or the right in question.[18]

5.13 The author reiterates that he requested a copy of the report on the administration procedure and the minutes of the general meeting, as shown by the copies submitted to the Committee.

Additional submissions by the parties

6.1 In a submission of 4 April 2014, the author informs the Committee that, on 6 March 2014, Trial Court of First Instance No. 5 of the Caracas Metropolitan Area District Court terminated the criminal proceedings instituted against him on the grounds that the alleged act did not constitute an offence under the law in force.

6.2 The author states that the appeal for annulment filed on 4 November 2010 is still pending, and reiterates his complaint concerning the undue delay.

7. On 8 October 2014, the State party confirmed that the criminal proceedings against the author and three other directors of Econoinvest had been terminated pursuant to the decree of 19 February 2014 amending the Act on Illegal Foreign Exchange Transactions. Court No. 5 ruled that, under the decree, the alleged acts no longer constituted an offence.

[17] Communication No. 1940/2010, *Cedeño v. Venezuela (Bolivarian Republic of)*, Views of 29 October 2012.

[18] General comment No. 32, para. 16.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the allegations of the author, who states that he is submitting the communication in a personal capacity and that, as a shareholder in and director of Econoinvest, he has been personally harmed by the company's placement under administration and its liquidation. The Committee recalls its general comment No. 31, according to which "the fact that the competence of the Committee to receive and consider communications is restricted to those submitted by or on behalf of individuals does not prevent such individuals from claiming that actions or omissions that concern legal persons and similar entities amount to a violation of their own rights".[19] The Committee observes that, in the present case, the author is acting in a personal capacity and not as a representative of Econoinvest; that he claims violations of his individual rights under the Covenant, violations that were the direct consequence of the placement under administration and liquidation of Econoinvest; and that, with regard to the allegations brought before the Committee, he submitted an appeal for annulment and a request for interim protection to the domestic courts on his own behalf. The Committee therefore considers that article 1 of the Optional Protocol does not constitute a barrier to the admissibility of the communication.

8.4 The Committee takes note of the State party's argument that domestic remedies have not been exhausted because, on the one hand, the appeal for annulment of the decision to liquidate Econoinvest is still pending and, on the other, the author has not submitted requests for a review of legality or a constitutional review through administrative channels, nor have the judges been recused from the criminal proceedings against the author. However, the Committee observes that the appeal for annulment, which was filed on 4 November 2010 and which should have been adjudicated within the statutory limit of 90 days, remains pending before the administrative court more than six years later and that the State party did not provide any explanation for this delay. As to the special request for a review of legality and the request for a constitutional review, the Committee notes that both parties agree that they are extraordinary and discretionary remedies. Furthermore, these remedies may be brought only against the decision on the annulment appeal and not against other decisions taken by State party officials. The Committee also observes that the author's request for interim protection and his request to suspend the effects of the liquidation decision were declared inadmissible by the Second Court and, on appeal, by the Supreme Court. Lastly, the Committee notes the author's assertion that the criminal proceedings against him have been terminated, that they are not the subject of the present communication and that he petitioned unsuccessfully for the recusal of the judges in the administrative proceedings concerning the annulment of the liquidation decision. Accordingly, the Committee considers that article 5 (2) (b) of the Optional Protocol does not constitute a barrier to the admissibility of the communication.

8.5 The Committee takes note of the author's complaints under article 14 (1) of the Covenant that his right to a fair and public hearing was violated because the placement under administration and liquidation of Econoinvest were decided without any specific legal procedure being followed, as the Capital Market Act does not even provide for an administration procedure; that the shareholders, including the author, were not permitted to present arguments or evidence to contest the report on the administration procedure; that they were not granted access to the report or to the minutes of the extraordinary general

[19] General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 9.

meeting, despite their repeated requests, which were addressed to, and stamped by, the National Superintendency of Securities; and that the administration and liquidation decisions were not sufficiently reasoned. The Committee recalls, however, that the second sentence of article 14 (1) of the Covenant protects the right to a fair and public hearing by a competent, independent and impartial tribunal for the determination of an individual's rights and obligations in a suit at law, and that the notion of a "tribunal" in that sentence "designates a body, regardless of its denomination, that is established by law, is independent of the executive and legislative branches of government or enjoys in specific cases judicial independence in deciding legal matters in proceedings that are judicial in nature". [20] Given that the National Superintendency of Securities was a purely administrative body that did not have these characteristics, the Committee considers that the guarantees contained in article 14 (1) are not applicable to the administration and liquidation procedure concerning Econoinvest carried out by the Superintendency. The Committee therefore considers that the author's contentions with regard to this procedure are incompatible *ratione materiae* with article 14 (1) and (3) (a) and (b) of the Covenant, which were invoked by the author, and declares them inadmissible under article 3 of the Optional Protocol.

8.6 The Committee notes the author's claim that the judges who were to hear the appeal for annulment were the same ones who had considered the request for interim protection in relation to the same matter and had passed an opinion on the merits of the case, which was why the author requested their recusal. However, the Committee observes that the author has not demonstrated how the fact that the Second Court had ruled on the request for interim protection would have affected its impartiality when settling the appeal for annulment, bearing in mind that a decision to grant interim measures does not presuppose the issuance of a decision on the merits of a case. Accordingly, the Committee considers that this claim has not been sufficiently substantiated by the author and declares it inadmissible under article 2 of the Optional Protocol.

8.7 With regard to the author's allegations under article 26 of the Covenant concerning the unequal treatment received in the light of the violations of due process, the Committee considers that, given the above finding that the procedural guarantees under article 14 (1) of the Covenant are not applicable to the administration and liquidation procedure concerning Econoinvest, and bearing in mind that the author has not explained how that procedure was discriminatory with regard to other market operators, or what grounds of discrimination were allegedly applicable to him, the claim has not been sufficiently substantiated. The Committee therefore declares it inadmissible under article 2 of the Optional Protocol.

8.8 The Committee considers that the author's contentions under article 14 (1) of the Covenant concerning the lack of guarantees affecting provisional judges, the consideration of a recusal procedure by a judge concerned by the procedure and the undue delay in the judicial proceedings relating to the appeal for annulment of the decision to liquidate Econoinvest have been sufficiently substantiated for purposes of admissibility. It declares them admissible and proceeds with their examination on the merits.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's allegations under article 14 (1) of the Covenant relating to the judicial proceedings before the Second Administrative Court, which was to rule on the appeal for annulment of the decision to liquidate Econoinvest. The Committee recalls that the concept of obligations "in a suit at law" set out in article 14 (1) of the Covenant includes, inter alia, procedures aimed at determining rights and obligations pertaining to the areas of contract, property and torts in the area of private law, as well as equivalent notions in the area of administrative law such as the taking of private property. [21]

[20] General comment No. 32, para. 18.
[21] Ibid., para. 16.

The Committee also recalls that, whenever domestic law entrusts a judicial body with a judicial task, the guarantees provided for in the first sentence of article 14 (1) of the Covenant are applicable, namely the right to equality before courts and tribunals and thus the principles of impartiality, fairness and equality, as enshrined in that provision, must be respected.[22] Accordingly, the Committee considers that those guarantees are applicable to the proceedings before the Second Administrative Court.

9.3 The Committee notes the author's allegation that the Second Administrative Court lacked independence and impartiality since it was composed of provisional judges, in violation of article 14 (1) of the Covenant. The Committee recalls that the procedure for the appointment of judges and guarantees relating to their security of tenure are requirements for judicial independence, and that any situation in which the executive is able to control or direct the judiciary is incompatible with the Covenant.[23] In this regard, the provisional appointment of members of the judiciary cannot exempt a State party from ensuring that the appropriate guarantees relating to the security of tenure of appointees are in place. Regardless of the nature of their appointment, members of the judiciary should be and appear to be independent. Additionally, temporary appointments should be exceptional and limited in time.[24] In the present case, the Committee notes the author's argument that the Second Administrative Court was composed of judges who had all been provisionally designated and who could be dismissed peremptorily, without reason or the need for any procedure and with no right of appeal, in line with the jurisprudence of the Constitutional Chamber of the Supreme Court. In the absence of any information from the State party to refute such allegations or demonstrate that guarantees relating to the security of tenure of the judges were in place, in particular guarantees protecting them from discretionary removal, and taking into account the political context described above surrounding the placement of the author's company under administration, the Committee considers, on the basis of the information before it, that the judges of the Second Administrative Court did not enjoy the necessary guarantees of independence provided for under article 14 (1) of the Covenant, in violation of this provision.

9.4 The Committee takes note of the author's claims that his request for the recusal of the judges of the Second Administrative Court was rejected at first instance by an alternate judge; that he appealed this decision on the grounds that it should have been collegiate and that he was not permitted to present arguments or evidence, as required by the Organic Act on the Settlement of Administrative Disputes; and that the appeal was heard by the President of the Court, whose recusal had also been requested by the author. The Committee recalls its jurisprudence to the effect that "a trial substantially affected by the participation of a judge who, under domestic statutes, should have been disqualified cannot normally be considered to be impartial".[25] In the present case, the participation in the recusal procedure of a judge who was concerned by that procedure raises questions about his impartiality. In the absence of any information from the State party to counter the author's allegations, the Committee considers that the author did not have access to an impartial judge, as required under article 14 (1) of the Covenant.

9.5 The Committee takes note of the author's claim about the excessive delay in the proceedings relating to the administrative appeal for annulment. The Committee recalls that an important aspect of the fairness of a hearing is its expeditiousness and that delays in civil proceedings that cannot be justified by the complexity of the case or the behaviour of the parties detract from the principle of a fair hearing enshrined in article 14 (1).[26] In the present case, the Committee observes that the administrative appeal for annulment is still pending after more than six years, without any convincing argument having been submitted by the State party to explain the delay in ruling on that appeal. In view of this, the

[22] Ibid., para. 7; and the Committee's Views on communication No. 1015/2001, *Perterer v. Austria*, of 20 July 2004, para. 9.2 (disciplinary proceedings against a civil servant), and communication No. 1973/2010, *Griffiths v. Australia*, of 21 October 2014, para. 6.5.

[23] General comment No. 32, para. 19.

[24] See in this regard, inter alia, the judgment of the Inter-American Court of Human Rights of 5 August 2008, *Apitz Barbera et al. v. Venezuela*, paras. 42 to 46.

[25] General comment No. 32, para. 21 *in fine*.

[26] Ibid., para. 27.

Committee considers that the author has not been granted a fair hearing in accordance with article 14 (1) of the Covenant. Accordingly, the Committee considers that the author's right under article 14 (1) of the Covenant has been violated.

10. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 14 (1) of the Covenant.

11. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires that full reparation be made to individuals whose Covenant rights have been violated. The State party should therefore ensure, inter alia, that the author has access to judicial proceedings that are in accordance with the guarantees established in article 14 of the Covenant. Moreover, the State party should award the author appropriate compensation for the violations committed against him according to the present Views. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure for all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information concerning the measures taken to give effect to the present Views. The State party is also requested to publish the Committee's Views in the official language of the State party and disseminate them widely.

Annex

[Original: French]

Individual opinion of Olivier de Frouville (partially dissenting)

1. In paragraph 8.3 of these Views, the Committee recognizes the standing of the author to submit a communication to the Committee. It notes that the author is acting in a personal capacity and not as a representative of Econoinvest, that he claims violations of his individual rights under the Covenant, violations that were the direct consequence of the placement under administration and liquidation of Econoinvest, and that he submitted appeals to the domestic courts on his own behalf.

2. Under article 1 of the Optional Protocol, only "individuals ... who claim to be victims of a violation" may submit a communication to the Committee. Legal persons therefore cannot submit communications and do not have locus standi before the Committee.[27]

3. In *S.M. v. Barbados*, the author was the owner of and sole shareholder in a company and claimed to be a victim of a violation of article 14 of the Covenant. The Committee declared the communication inadmissible under article 1 of the Optional Protocol:

> "The author is essentially claiming before the Committee violations of rights of his company. Notwithstanding that he is the sole shareholder, the company has its own legal personality. All domestic remedies referred to in the present case were in fact brought in the name of the company, and not of the author."[28]

4. The Committee applied the same principle in *Lamagna v. Australia*[29] and *Mariategui et al. v. Argentina*.[30]

5. The present case does not appear to differ significantly from the precedents cited above. In this case, as in the others, proceedings were brought at the domestic level solely to defend the company's rights, and not the author's own rights. In the first place, it was Econoinvest itself that applied to the National Superintendency of Securities on 14 June 2010 for reconsideration of the resolution ordering it to be placed under administration. Once the company had actually been placed under administration, it was no longer able to act through its statutory bodies to contest the liquidation decision. Some directors and shareholders, including the author, therefore took over responsibility from the company for defending its rights. To that end, they submitted an appeal for annulment, a request for interim protection (*amparo cautelar*) and a petition for protective measures with suspensive effect in relation to the decision to liquidate Econoinvest. The arguments put forward concerning procedural irregularities, namely the violation of the shareholders' "rights to a defence and to be heard by a duly appointed judge", have no bearing on the purpose of the appeals, which was to defend the company's rights, and not the shareholders' own rights. The author himself recognizes this explicitly. He notes that the present communication does not concern the criminal proceedings against him and three other directors of Econoinvest but rather the placement under administration and liquidation of Econoinvest (para. 5.9). Essentially, the author is seeking from the Committee a ruling that the proceedings that led to the company's placement under administration and liquidation were unlawful.

6. The Committee does not correctly interpret its own jurisprudence in this case. It cites general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, which recalls that individuals may claim that actions or

[27] See communication No. 360/1989, *A newspaper publishing company v. Trinidad and Tobago*, decision adopted on 14 July 1989.

[28] Communication No. 502/1992, *S.M. v. Barbados*, decision adopted on 31 March 1994, para. 6.2.

[29] Communication No. 737/1997, *Lamagna v. Australia*, decision adopted on 7 April 1999, para. 6.2.

[30] Communication No. 1371/2005, *Mariategui et al. v. Argentina*, decision adopted on 26 July 2005, para. 4.3.

omissions that concern legal persons amount to a violation of their own rights.[31] The Committee appears to infer from this that the shareholders could somehow take the company's place in defending its rights when it is no longer able to do so itself, for example in the event of liquidation. However, the Committee must take care not to go too far, unless it wishes to change the interpretation of its jurisprudence in the cases mentioned above. Indeed, the Committee has always taken care to maintain the "corporate veil", taking the view that the violation of a company's rights does not necessarily entail the violation of its shareholders' rights. The Committee has pushed this logic very far, and perhaps too far, since, as was the case in *S.M. v. Barbados*, it has even applied it to sole shareholders on the grounds that a company has "its own legal personality", even though in such cases an argument could be made for lifting the veil.

7. In the present case, the procedural irregularities noted by the Committee in its consideration of the merits, including the lack of independence of the Administrative Court, the lack of impartiality of the judge ruling in the recusal procedure and the failure to observe a reasonable time limit, were prejudicial to the company's rights. However, the author has not established that these irregularities infringed his individual rights.

8. The Committee has not indicated that it wishes to depart from its jurisprudence in this case. Consequently, in the light of its established jurisprudence, it should have declared the communication inadmissible under article 1 of the Optional Protocol.

9. The question remains as to whether the Committee's jurisprudence should evolve or not, in particular in the light of law and practice in the regional systems. The European framework is not comparable, since under article 34 of the European Convention on Human Rights, non-governmental organizations may submit applications to the Court, which has always interpreted this provision as giving locus standi to commercial companies.[32]

10. The jurisprudence of the inter-American system is in line with that of the Committee,[33] and even quotes explicitly from it on certain issues.[34] That would therefore be an argument in favour of the Committee reserving locus standi for natural persons. With regard to the shareholders, in my view it would be sensible to maintain the distinction between rights and interests established by the International Court of Justice.[35] To my mind,

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[31] See communication No. 455/1991, *Singer v. Canada*, Views adopted on 26 July 1994, para. 11.2, in which the Committee considered "that the author himself, and not only his company, has been personally affected by the contested provisions of Bills ...," which inhibit his freedom of expression by restricting the use of English for commercial purposes.

[32] In this context, the European Court of Human Rights considered that a company's shareholders did not, in principle, have the capacity to bring a case before the Court for a violation of the company's rights, except in "exceptional circumstances" and specifically if the company was unable to bring proceedings through its statutory organs (*Agrotexim and Others v. Greece*, judgment, 24 October 1995, Series A, No. 330-A). In this case, the lifting of the corporate veil enabled the shareholders to assert the company's rights. In a case in which the facts are similar to those submitted to the Committee by Mr. Zamora, the applicant was contesting the appointment of a compulsory administrator "without a proper opportunity being granted" to the company concerned (a bank) "to oppose it". The Court considered that to hold that the administrator alone was authorised to lodge an application with the Court would be to render the right of individual petition illusory. It therefore recognized that there were "exceptional circumstances" that justified the former President of the bank's Board of Directors and its majority shareholder to lodge an application in that particular case (*Credit and Industrial Bank v. the Czech Republic*, No. 29010/95, ECHR 2003-XI (extracts), paras. 50 and 51).

[33] Inter-American Court of Human Rights, *Ivcher-Bronstein v. Peru*, 6 February 2001, para. 127; *Cantos v. Argentina*, 7 September 2001, Preliminary Objections, Series C, No. 85, paras. 27 and 29, and 28 November 2002, Merits, Series C, No. 97; *Perozo et al. v. Venezuela*, 28 January 2009, Preliminary Objections, Merits and Reparations, Series C, No. 195. And especially Advisory Opinion No. 22 of 26 February 2016, Entitlement of legal entities to hold rights under the inter-American human rights system.

[34] See *Granier et al. v. Venezuela*, Preliminary Objections, Merits and Reparations, Judgment of 22 June 2015, Series C, No. 293, para. 146 et seq. The Court relies in particular on the Committee's Views in the aforementioned *Singer v. Canada* case.

[35] *Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970*, p. 3, at p. 36, paras. 46 and 47.

a shareholder should have locus standi before the Committee only if he or she is claiming a violation of his or her own rights under the Covenant, and not a violation of the company's rights, even if such a violation were to have a negative impact on his or her interests as a shareholder.